IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2677 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRDHARI ALIAS HARU S/O. CHHANCHHUMAL TOLANI (SINDHI)

Versus

COMMISSIONER OF POLICE VADODARA

Appearance:

1. Special Civil Application No. 2677 of 2003

MR SATISH R PATEL for Petitioner

MR RC KODEKAR, AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2003

ORAL JUDGEMENT

1. Heard Mr.S.R.Patel, learned advocate for the

petitioner and Mr.R.C.Kodekar, learned AGP for the respondents.

2. In the present petition, Rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 11.03.2003, made it returnable after six weeks. In the present petition, the order of detention dated 20.01.2003 passed by the Commissioner of Police, Vadodara City, under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter be referred to as the "PASA Act"] has been challenged by the petitioner on various grounds. The Detaining Authority has executed the order of detention, the petitioner was detained in Rajkot District Jail. According to the ground of detention, two offences have been registered on 06.12.2002 against the petitioner under the provisions of Prohibition Act. The two unregistered offences dated 23.11.2002 and 01.12.2002 have been disclosed by the secret witnesses. The statements of the secret witnesses have been recorded by the Sponsoring Authority on 16.12.2002 and 19.12.2002 and the same have been verified by the Detaining Authority on 01.01.2003. The affidavit-in-reply has been filed by the Detaining Authority, which is taken on record. A copy thereof has been served to the petitioner.

3. Mr.S.R.Patel, learned advocate for the petitioner has submitted that in the present petition, in para-15 the contention raised by the petitioner is that while making the verification by the Detaining Authority, the Detaining Authority has not properly verified the genuineness and correctness of the incident. The Detaining Authority has also not made any inquiry whether such incident has stated by the witnesses had happened or not and no record has been kept with this regard and, therefore, according to him the privilege claimed by the Detaining Authority under Section 9(2) of the PASA Act is also vitiated.

4. Mr.R.C.Kodekar, learned AGP for the respondents has submitted that para-15 of the petition, as answered by the Detaining Authority in reply affidavit in para-7. He has submitted that the Detaining Authority, after satisfying himself that the fear expressed and the apprehension made by them is found to be quite real, proper, genuine and reasonable and after applying his mind to the facts of the case, the Detaining Authority subjectively satisfied that if the names, addresses and other particulars of the witnesses are disclosed to the detenu, their lives and properties will be in danger. Therefore, the Detaining Authority has claimed privilege under Section 9(2) of the PASA Act.

5. I have considered the submissions made by learned advocates and I have also considered the contention raised by Mr.S.R.Patel, learned advocate for the petitioner. I have perused the affidavit-in-reply filed by the Detaining Authority and I have also perused the entire record produced by the petitioner. I have also perused the statements of the secret witnesses produced by the petitioner.

6. The contention raised by Mr.S.R.Patel is that though the secret witnesses have narrated two incidents and two statements. He has also submitted that these incidents, in real sense, had actually happened or not. That aspect has not been verified by the Detaining Authority. He has also submitted that it is duty of the Detaining Authority to justify the subjective satisfaction, in respect to the incident, is real one or not. Merely, the verification of the statements of the secret witnesses made by the Detaining Authority, is not enough. The secret witnesses have given their statements before the Sponsoring Authority, now that statements are required to be verified in all angle by the Detaining Authority because he is the highest authority, who is passing the order of detention against the petitioner. If the Detaining Authority has merely verified the person, who had made the statement before the Sponsoring Authority are the same or not. The Detaining Authority should be required to examine, whether the incident narrated by the secret witnesses has occurred in the society or not. There is no reply filed by the Detaining Authority as to whether this incident is real one or not and no such inquiry has been made by the Detaining Authority before passing the order of detention against the petitioner. No credibility of the witnesses have been examined by the Detaining Authority, merely formal inquiry with the witnesses about the earlier statements is not enough and on that basis, subjective satisfaction cannot be justified by the Detaining Authority. The similar view has taken by this Court [Coram : Ms.R.M.Doshit,J.] in Special Civil Application No.1692 of 1999 dated 07.07.1999. The relevant observation made by this Court in para-2 as under :-

> "It is true that both the offences have been registered against the petitioner for violation of prohibition law, however, nothing on record suggest tat at the time of the raid, anything happened that would amount to breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the

> petitioner has been indulging into anti-social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the Detaining Authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the Detaining Authority or any other officer would not be sufficient. Besides, the Detaining Authority has not made by counter affidavit to show whether such exercise had been undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The Detaining Authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order."

7. Considering the aforesaid observation made by this Court as well as the facts of this case, there is no such inquiry made by the Detaining Authority about such incident had happened or not. The subjective satisfaction cannot be justified by the Detaining Authority from verification of the statements of the secret witnesses recorded by the Sponsoring Authority. On this ground alone, the order of detention is required to be quashed and set aside.

8. In the result, the present petition is allowed. The order of detention dated 20.01.2003 passed by the Commissioner of Police, Vadodara City, against the detenu Shri Girdhari alias Haru s/o. Chhanchhumal Tolani (Sindhi) detained at Rajkot District Jail is hereby

quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H. K. Rathod,J.]

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